INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute involved	2
Statement	2
1. The facts and the proceedings	3
2. Executive policy	7
Argument	10
Conclusion	21
Appendix	22

CITATIONS

Cases:

Associated Press v. *United States*, 326 U. S. 1	20
Banque de France v. *Equitable Trust Co.*, 33 F. 2d 202	17
Central Hanover Bank & Trust Co. v. *Markham*, 68 F. Supp. 829	19
Central Trust Co. v. *Garvan*, 254 U. S. 554	19
Clark v. *Uebersee Finanz-Korporation*, 332 U. S. 480	20
Commercial Trust Co. v. *Miller*, 262 U. S. 51	19
Compania Espanola v. *Navemar*, 303 U. S. 68	16
Cummings v. *Deutsche Bank*, 300 U. S. 115	19
Cunard S. S. Co. v. *Mellon*, 262 U. S. 100	16
The S. S. Denny, 40 F. Supp. 92, reversed, 127 F. 2d 404	18
Farmers' Loan & Trust Co. v. *Hicks*, 9 F. 2d 848, certiorari denied, 269 U. S. 583	19
Gelston v. *Hoyt*, 3 Wheat. 246	11
In re Grauds' Estate, 43 N.Y.S. 2d 803	18
Guaranty Trust Co. v. *United States*, 304 U. S. 126	11
Guessefeldt v. *McGrath*, C.A.D.C., May 3, 1951	20
James & Co. v. *Second Russian Ins. Co.*, 239 N. Y. 248	17
Jones v. *United States*, 137 U. S. 202	11
Kahn v. *Garvan*, 263 Fed. 909	19
The Kotkas, 35 F. Supp. 983	11, 18
The Kuressaar, A.M.C. (1941) 1190	18
Laane and Baltser v. *Estonian State Cargo and Passenger Steamship Line* [1949] 2 D.L.R. 641	18
McGrath v. *Zander*, 177 F. 2d 649	20
The Maret, 145 F. 2d 431	9, 17
Oetjen v. *Central Leather Co.*, 246 U. S. 297	11, 16

Cases—Continued

	Page
Petrogradsky M. K. Bank v. *National City Bank*, 253 N. Y. 23	17
Propper v. *Clark*, 337 U. S. 472	19
Ricaud v. *American Metal Company*, 246 U. S. 304	16
Rose v. *Himely*, 4 Cranch. 241	11
Salimoff & Co. v. *Standard Oil Co.*, 262 N. Y. 220	17
The Signe, 37 F. Supp. 819	11
The Signe, 39 F. Supp. 810, affirmed *sub nom. The Florida*, 133 F. 2d 719, certiorari denied, 319 U. S. 774, rehearing denied, 320 U. S. 811	17
Stern v. *Newton*, 180 Misc. 241, 39 N.Y.S. 2d 593	19
Stoehr v. *Wallace*, 255 U. S. 239	20
A/S Tallinna Laevauhisus v. *Estonian State S.S. Line*, 80 LL.L. Rep. 99	18
In re Taylor, 118 Fed. 196	11
Underhill v. *Hernandez*, 168 U. S. 250	16
United States v. *The Antoinetta*, 153 F. 2d 138, certiorari denied, 328 U. S. 863	19
United States v. *Belmont*, 301 U. S. 324	11
United States v. *Curtiss-Wright Export Corp.*, 299 U. S. 304	15
United States v. *Pink*, 315 U. S. 203	11-13, 14, 15, 16
United States ex rel. Schwarzkopf v. *Uhl*, 137 F. 2d 898	16
Williams v. *Suffolk Insurance Co.*, 13 Peters 415	11
Zarine v. *Owners of S. S. Ramava* [1942] I.R. 148	18
Zittman v. *McGrath*, 341 U. S. 446	19

Statute and Executive Orders:

Trading with the Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App.:

Section 2	6, 22
Section 5	22
Section 9(a)	2, 19, 20, 24
Section 32	6, 7, 20, 26

Executive Orders:

8389, as amended, Sec. 5E(i), 6 F.R. 2897	6
8484, 5 F.R. 2586	7
9193, 7 F.R. 5205	6
9788, 11 F.R. 11981	3

Miscellaneous:

8 C.F.R. § 503.1 (3)	7
Corwin, *The President* (3d ed., 1948)	15

Miscellaneous—Continued

	Page
Corwin, *The President's Control of Foreign Relations* (1917)	11
The Diplomatic List, Department of State (June, 1951)	9
Langer, *Seizure of Territory* (1947)	9
Statement of Sumner Welles, Acting Secretary of State, July 23, 1940, 3 Dept. of State Bulletin, 1940	7-9
Treasury Department, General License No. 94, Dec. 7, 1945, 10 F.R. 14814	7
Vesting Order No. 1941, 8 F.R. 11304	5, 6, 31
Vesting Order No. 1942, 8 F.R. 11304	5, 6, 35
Vesting Order No. 2092, 8 F.R. 12831	6, 38

In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 65

LATVIAN STATE CARGO AND PASSENGER STEAMSHIP LINE, PETITIONER

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL OF THE UNITED STATES AND SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 56-59) is reported in 80 F. Supp. 683. The opinion of the Court of Appeals (R. 62-65) is reported at 188 F. 2d 1000.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on

February 23, 1951 (R. 66). The petition for a writ of certiorari was filed on May 22, 1951. The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code.

QUESTIONS PRESENTED

1. Whether a confiscatory "nationalization" decree of a foreign government, which purported to affect the title to property not within the territory or control of that government, is to be given effect by the courts of the United States where neither the government nor its nationalization decree is recognized by the United States.

2. Whether, in an action under Section 9(a) of the Trading with the Enemy Act to establish the plaintiff's interest in property vested by the Alien Property Custodian and obtain return of the interest so established, a plaintiff is entitled to contest the claim to the property of other persons, not parties to the suit.

STATUTE INVOLVED

This action was brought under Section 9(a) of the Trading with the Enemy Act. The relevant sections of that Act are printed in the Appendix, *infra,* pp. 22-31.

STATEMENT

Petitioner brought this suit under Section 9(a) of the Trading with the Enemy Act to recover funds vested by the Alien Property Custodian by Vesting Orders Nos. 1941, 1942, and 2092 as the

property of the Latvian Shipping Company, Janis Zalcmanis, Karlis Jansons, and Georg and "Jane" Freimanis (R. 2-4).[1] Petitioner based its claim upon "nationalization" decrees of the government of the Latvian Soviet Socialist Republic, which has not been recognized by the United States (Pet., p. 3). The district court entered judgment for the defendant (R. 60)[2] upon a motion for summary judgment supported by affidavits and exhibits (R. 4-52). The court of appeals affirmed (R. 66).

1. *The facts and the proceedings:*—The undisputed facts are as follows: In 1940, Janis Zalcmanis, Karlis Jansons, and Janis Freimanis were citizens and residents of the Republic of Latvia (R. 51). Under the name of Latvijas Kugniecibas Sabiedriba—Latvian Shipping Company—they operated three Latvian ships, the *Abgara, Ciltvaira,* and *Regent* (R. 10, 36, 40, 45, 52). Each of them owned a one-third interest in the *Abgara* and the *Ciltvaira* (R. 38, 40, 42). Freimanis was the sole owner of the *Regent* (R. 40, 42).

In June 1940, Soviet troops occupied the Re-

---

[1] The vesting orders are printed in the Appendix, *infra,* pp. 31-41. By Executive Order No. 9788 (Oct. 15, 1946, 11 F.R. 11981) the Attorney General succeeded to the powers and duties of the Alien Property Custodian. In this brief, the terms "Alien Property Custodian" or "Custodian" will be used, as the context may require, to refer either to the Alien Property Custodian or the Attorney General as his successor.

[2] The suit was originally brought against Tom C. Clark as Attorney General. J. Howard McGrath was duly substituted as a defendant upon his succession to that office.

public of Latvia. A new government was set up and a constitution on the Soviet Russian model adopted. Shortly thereafter, the U.S.S.R. announced that the Latvian Republic, renamed the "Latvian Soviet Socialist Republic" had been incorporated into the Soviet Union. By a legislative "Declaration" (R. 52), made by the [Soviet] Latvian Parliament on July 22, 1940, and a "Decree" (R. 53) issued on October 5, 1940 by the "Presidium of the Latvian Supreme Soviet", all Latvian shipping enterprises and their assets, both at home and abroad, and all rights belonging to such enterprises, such as claims to insurance sums, etc., were declared nationalized. The compensation payable to the owners of the nationalized ships was fixed at 25% of their value.[3] On October 25, 1940, pursuant to a decree of the "Council of People's Commissars of the Union of Soviet Socialist Republics," plaintiff was organized as a public corporation for the purpose of holding title to the nationalized Latvian ships (R. 10, 28, 31, 33, 34, 35, 36, 51).

None of the three vessels was within the territorial waters of the Latvian S.S.R. or the U.S.S.R. when the nationalization laws were enacted. It is undisputed that on October 5, when the "Decree" was passed, the *Abgara* was in Argentinian territorial waters (R. 48) and the *Ciltvaira* was on the

[3] There is nothing in the record or the files of the Department of Justice to suggest that even this fractional "compensation" has been paid or tendered.

high seas in the Western Hemisphere (R. 45), and that neither vessel has at any time since the latter part of 1939 been in European waters (R. 46-50). The *Regent,* dry-docked in Brooklyn, New York, had been in the custody of the United States marshal for the Eastern District of New York (R. 44) since September 24, 1940. Her position on July 22, 1940, the date of the "Declaration", does not appear but it is undisputed that, like her sister ships, she had on or before that date left Latvian and Soviet Russian territorial waters and never returned to them.

Sometime before February 1941, all three vessels had arrived in New York. Following their arrival, possessory libels were filed against the *Ciltvaira* and *Abgara* in the United States District Court for the Southern District of New York (R. 27, see also Vesting Order No. 1941, App., *infra,* p. 32, 8 F. R. 11304) and against the *Regent* in the Eastern District of New York (R. 27-28, see also Vesting Order No. 1942, App., *infra,* pp. 35-36, 8 F. R. 11304). The libels were filed in the name of the Latvian Shipping Company and certain individuals whose relationship to the vessels does not appear from this record.

On petitioner's behalf, Charles Recht, one of petitioner's counsel here, filed intervening libels against all three vessels (R. 9, 35); in the course of these proceedings, pursuant to orders of the district courts, Mr. Recht and Joseph G. Kearns

were appointed joint trustees for the ships (R. 27-29). While operated under this trusteeship the ships were sunk in 1942 (R. 28, 29, 34, 38, 40, 48), whereupon the federal courts ordered the insurance proceeds and operating revenues of the vessels deposited in the names of the two trustees (R. 28, 29). These were the funds seized by the vesting orders.

On August 6, 1943, the Alien Property Custodian vested the sums standing in the name of Recht and Kearns as trustees of the three vessels (Vesting Orders Nos. 1941, 1942, App., *infra,* pp. 31-37, 8 F.R. 11304) and on September 4, 1943, he vested an additional sum standing in the name of the Latvian Shipping Company (Vesting Order No. 2092, App., *infra,* pp. 38-41, 8 F.R. 12831). The Custodian's orders were based on a determination that the funds vested were the property of Karlis Jansons, Janis Zalcmanis, and of the widow, son and heirs of Janis Freimanis, who had meanwhile died in Germany. The Custodian also found that the individuals named in the orders were residents of Germany or of Latvia, which was then German-occupied, and that they were nationals of Germany.[4]

Conflicting claims for the return of the vested funds were filed with the Custodian under Section

---

[4] Under the Trading with the Enemy Act, residents of enemy-occupied territory are regarded as enemy nationals whose property will be vested. Executive Order No. 8389, as amended, Sec. 5 E(i), 6 F.R. 2897; Executive Order No. 9193, Secs. 2, 10, 7 F.R. 5205. *Cf.* Section 2 of the Trading with the Enemy Act, 40 Stat. 411, 50 U.S.C. App. § 2.

32 of the Trading with the Enemy Act. After hearings, claims for the funds derived from the *Abgara* and the *Ciltvaira* by Janis Zalcmanis, by the administrator of the estate of Karlis Jansons (who had died in the meantime), and by the Latvian Shipping Company were allowed on April 27, 1948, and on the same day a claim filed by the petitioner for the funds derived from all three ships was disallowed (R. 3). On June 11, 1951, claims filed by the widow and son of Janis Freimanis, who had died in the meantime, for one-third of the funds derived from the *Abgara* and the *Ciltvaira* and for the funds derived from the *Regent* were disallowed by the Chief Hearing Examiner for Title Claims of the Office of Alien Property[5] on the ground that the claimants were German citizens who were present in Germany after December 7, 1941 and who, therefore, were not eligible to receive a return of property under Section 32 of the Trading with the Enemy Act.[6]

2. *Executive policy:*—On July 23, 1940, the day after the legislative "Declaration" purporting to confiscate Latvian shipping enterprises (*supra,* p. 4),[7] Mr. Sumner Welles, then the acting Secre-

---

[5] Determinations of the Hearing Examiner are open to public inspection. 8 C.F.R. § 503.1(3).

[6] See Sec. 32 of the Act, Appendix, *infra*, pp. 26 ff.

[7] Even prior to that date all property of Latvian, Lithuanian, and Estonian nationals had been frozen. Executive Order No. 8484 (5 F.R. 2586). By General License No. 94, December 7, 1945 (10 F.R. 14814) the Treasury Department lifted freezing controls over most blocked countries, including Latvia, with respect to transactions after its date.

tary of State, issued the following formal statement which is notable for its disregard of the restraint usual in diplomatic utterances:

> During these past few days the *devious processes* whereunder the political independence and territorial integrity of the three small Baltic republics—Estonia, Latvia, and Lithuania—were to be *deliberately annihilated* by one of their more powerful neighbors, have been rapidly drawing to their conclusion.
>
> From the day when the peoples of these republics first gained their independent and democratic form of government the people of the United States have watched their admirable progress in self-government with deep and sympathetic interest.
>
> The *policy of this Government is universally known.* The people of the United States are opposed to *predatory activities* no matter whether they are carried on *by the use of force or by the threat of force.* They are likewise opposed to any form of intervention on the part of one state, however powerful, in the domestic concerns of any other sovereign state, however weak.
>
> These principles constitute the very foundations upon which the existing relationship between the 21 sovereign republics of the New World rests.
>
> *The United States will continue to stand by these principles,* because of the conviction of the American people that unless the doctrine in which these principles are inherent once again governs the relations between nations,

> the rule of reason, of justice, and of law—in other words, the basis of modern civilisation itself—cannot be preserved. [3 Department of State Bulletin (1940) p. 48.] [Italics added.]

On March 14, 1942, the Department of State issued four documents certifying that the United States had not recognized the absorption of Latvia by either Germany (then in military control of Latvia) or the Soviet Union, that the legality of the so-called "nationalization decrees" or of any acts of the Soviet or German regimes there was not recognized by the United States, and that all treaties between the United States and the independent Latvian Republic were still in existence.[8]

The diplomatic and consular representatives of the independent Latvian Republic have continued to the present to be authorized to discharge their official duties in this country as heretofore,[9] while this Government has steadfastly refused to permit the consular officials of the Soviet Union to act on behalf of Latvia and her nationals in this country.[10]

---

[8] Nos. 1228, 1229, 1230, 1242; for texts see Langer, *Seizure of Territory* (1947), p. 264, n. 32. Similar documents appear to have been issued concerning Estonia as early as April 15, 1941. See *The Maret*, 145 F. 2d 431, 438, n. 33 (C.A. 3).

[9] See State Department, Diplomatic List, June 1951, listing Mr. Jules Feldmans, Minister Plenipotentiary, as chargé d'affaires of the Latvian Republic.

[10] By letters dated March 26, 1948, the Department of State advised all state governors that:

> The Department has never recognized the incorporation of Latvia, Estonia, and Lithuania into the Soviet Union and, consequently does not regard Soviet consular officers or their attorneys as having any right to act on

This policy of non-recognition is again stated in explicit terms in the certificates issued August 2, 1948, by Secretary of State Marshall, which were introduced in the district court in support of respondent's motion for summary judgment (R. 20-21). In them the Secretary certified:

> * * * that the incorporation of Latvia by the Union of Soviet Socialist Republics is not recognized by the Government of the United States.
>
> * * * that the legality of the so-called "nationalization" laws and decrees, or of any of the acts of the Soviet regime which assumed power in Latvia in 1940, or of any subsequent regime in that country has not been recognized by the Government of the United States.

ARGUMENT

In accordance with an explicit policy of the Executive, acting as this country's prime instrument in the conduct of foreign relations, the court of appeals has refused to give effect to a confiscatory decree of an unrecognized government with respect to property not within the territory of that government. In so holding it followed the line plainly marked out by the decisions of this Court.

---

behalf of non-resident Latvian, Estonian or Lithuanian nationals. * * * In the case * * * of Latvian * * * nationals such right has been reserved to consular officers of * * * [Latvia] by Article XXV of the treaty of Friendship, Commerce and Consular Rights of 1928 between the United States and Latvia * * * [For full text see copy of letter addressed to the Governor of Alabama, App., *infra*, pp. 41-43.]

The decision below is correct and does not call for further review.

1. The doctrine is well settled in American constitutional law that executive decisions in the field of foreign affairs are by their very nature not susceptible of review by the courts. Particularly in the matter of recognition or non-recognition of foreign governments and the policy underlying the position taken by our Government the courts have never hesitated to accept executive determinations as conclusive. *Rose* v. *Himely*, 4 Cranch. 241, 272; *Gelston* v. *Hoyt*, 3 Wheat. 246, 323; *Jones* v. *United States*, 137 U.S. 202, 212; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302; *United States* v. *Belmont*, 301 U.S. 324, 328; *Guaranty Trust Co.* v. *United States*, 304 U.S. 126, 137-138; *United States* v. *Pink*, 315 U.S. 203. See also Corwin, *The President's Control of Foreign Relations* (1917) p. 82.[11]

United States v. *Pink*, 315 U.S. 203, made clear the comprehensive scope of this executive power. The basic question in that case was the power of the New York courts to apply the state's policy against confiscation in determining rights to the New York assets of a "nationalized" Russian insurance company, despite this country's recognition of the Soviet Union in 1933 and the negotiation of the

[11] These principles apply where the question involves the recognition or nonrecognition of the annexation of new territory by an existing state, cf. *Williams* v. *Suffolk Insurance Co.*, 13 Peters 415, 420; *In re Taylor*, 118 Fed. 196 (D. Mass.); *The Kotkas*, 35 F. Supp. 983, 984 (E.D.N.Y.); *The Signe*, 37 F. Supp. 819, 822 (E.D. La.),

Litvinov Assignment which had established a federal public policy upholding the validity of the Soviet nationalization decrees. In rejecting the claim that the New York courts were free to disregard this policy, the Court (a) sustained the executive's power "to determine the public policy of the United States with respect to the Russian nationalization decrees" (315 U.S. at 229-230),[12] (b) pointed out that the enforcement by the New York courts of the state's public policy "would collide with and subtract from the Federal policy" (p. 231) by refusing "to give effect or recognition in New York to acts of the Soviet Government which the United States by its policy of recognition agreed no longer to question" (p. 231) and restoring "some of the precise impediments to friendly relations which the President intended to remove on inauguration of the policy of recognition of the

[12] "*The powers of the President in the conduct of foreign relations included the power, without consent of the Senate, to determine the public policy of the United States with respect to the Russian nationalization decrees.* 'What government is to be regarded here as representative of a foreign sovereign state is a political rather than a judicial question, and is to be determined by the political department of the government.' *Guaranty Trust Co.* v. *United States*, 304 U.S. at p. 137. That authority is not limited to a determination of the government to be recognized. It includes the power to determine the policy which is to govern the question of recognition. * * * It was the judgment of the political department that full recognition of the Soviet Government required the settlement of all outstanding problems including the claims of our nationals. Recognition and the Litvinov Assignment were interdependent. We *would usurp the executive function if we held that that decision was not final and conclusive in the courts.*" (315 U.S. at 229-230.) (Italics added.)

Soviet Government" (p. 231), and (c) concluded that the New York courts could not thus take action which "amounts in substance to a rejection of a part of the policy underlying recognition by this nation of Soviet Russia" (p. 233). Similarly, the concurring opinion emphasized that the state court could not adopt a rule which would "thwart to any extent 'the policy which the United States has adopted' when the President reestablished friendly relations in 1933" (315 U.S. at 240).[13]

Here, as in *Pink,* the President, speaking through the appropriate executive department, has determined "the public policy of the United States with respect to the [Latvian] nationalization decrees". He has declared that the annexation and sovietization of the Baltic States which resulted in the issuance of the decrees on which petitioner relies was an act of aggression to which this nation will give no countenance. And the Secretary of State has expressly certified to the district court that the legality of these decrees "has not been recognized by the Government of the United States". This unequivocal affirmative policy has existed for over a decade. It began in the days of the Nazi-Soviet pact, was adhered to

[13] Even Mr. Chief Justice Stone, dissenting, based his disagreement primarily on the ground that the actions taken by the Executive did not in his view disclose a clear purpose to require state recognition of the Russian confiscatory decrees as applied to property having a situs in New York and left open the question whether had such a clear purpose been disclosed, it would override any inconsistent state policy.

throughout World War II when the United States and the Soviet Union were allies, and has continued since the ending of hostilities in 1945. At present it has added significance, for our protests against past Soviet aggressions have been reaffirmed by the declared determination of this country to contain further lawless expansion of the Soviet Union. For the courts to disregard these definitive executive determinations would—as clearly as in *Pink*—"collide with and subtract from the Federal policy" (315 U.S. at 231) and amount to a "rejection of a part of the policy underlying" nonrecognition by this nation of the Soviet conquests (315 U.S. at 233).

Petitioner attempts to have the principles of the *Pink* case put to one side because instead of recognizing Soviet Latvia and her confiscatory decrees, as he had done in the case of the Soviet Union, the President, in the responsible conduct of our foreign policy, explicitly determined that this recognition should be withheld. The theory of the *Pink* decision, however, makes a non-recognition determination no less binding on the courts than recognition would have been. For the power of the Executive to recognize foreign governments and their confiscatory decrees necessarily includes the power to refuse to recognize. As a practical matter the determination to continue to recognize the independent Latvian Republic can be made effective only by denying recognition to the Soviet

government of Latvia.[14] Such non-recognition is as potent an instrument of our foreign policy as is recognition. See, Corwin, *The President* (3d ed. 1948), p. 230. And the firm foundation of the *Pink* holding is that courts would usurp the Executive's functions in the field of foreign relations if they refused to be bound by a valid executive act in that sphere. See 315 U.S. at 229-230. As the concurring opinion in that case points out, had any state court during the period from 1918 to 1933 "given comfort to the Russian views [on propaganda and expropriation] in this contest between its government and ours, it would, to that extent, have interfered with the conduct of our foreign relations by the Executive * * *." 315 U.S. at 240.

Acceptance of petitioner's thesis as to non-recognition would result in a curiously one-handed authority of the Executive with respect to foreign relations. It could recognize a new government and that recognition would be binding and conclusive, but until it was prepared to accord recognition it could do nothing. No decision of this Court and no principle of law warrants such a result. The power of the President in the field of foreign relations is "plenary and exclusive". *United States* v. *Curtiss-Wright Export Corp.*,

---

[14] The statements in the petition (pp. 13, 18) that there is no government-in-exile recognized for Latvia are erroneous. See *supra*, pp. 9-10, and also the certificate of the Secretary of State which appears in the Record at pages 19 and 20.

299 U.S. 304, 320. As the court of appeals said, referring to petitioner's arguments, "The control of the executive branch over foreign affairs must necessarily be broader than that". (R. 65).[15]

2. Apart from deference to the executive declarations of non-recognition, the courts below would have been justified in refusing enforcement of the nationalization decrees as contrary to American public policy. The courts have long held that effect will be given to the political decrees of unrecognized governments only where the legislation does not conflict with our concepts of justice. *James*

---

[15] The oft-repeated statement that "the courts of one country will not sit in judgment on the acts of the government of another done within its own territory" has been applied by this Court only where recognition has been accorded the foreign government. See *Underhill* v. *Hernandez*, 168 U.S. 250, 253-4; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 303-304; *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 307; *United States* v. *Pink*, 315 U.S. 203, 233. Certainly, this principle cannot govern where the Executive has, in addition to withholding recognition from the government, affirmatively withheld recognition from the specific governmental action involved.

In any event, the ships in question were not within Latvia's territorial waters when the decrees were issued or at any time since (R. 44, 45, 46-50), and petitioner never acquired possession of them or the obedience of the officers in charge of the ships. Cf. *Compania Espanola* v. *Navemar*, 303 U.S. 68, 75-6. Petitioner also relies on the "floating island" theory (p. 19) which assimilates a ship to a chattel within the borders of its home state for many purposes. But that theory will not be applied in derogation of the policy of the United States. *Cunard S. S. Co.* v. *Mellon*, 262 U.S. 100, 123. And to apply the theory in the instant case would assume that the ships changed the flag of the independent and recognized Latvian Republic for that of Soviet Latvia. The invasion by Russia did not operate to change the allegiance of the masters and crews, who were outside the Latvian borders. See, *United States ex rel. Schwarzkopf* v. *Uhl*, 137 F. 2d 898, 902 (C.A. 2).

& Co. v. *Second Russian Ins. Co.*, 239 N.Y. 248, 255-6; *Petrogradsky M. K. Bank* v. *National City Bank*, 253 N.Y. 23, 28-35. Confiscatory decrees of the Soviet Latvian type clearly offend our national policy of just compensation and they have been enforced only where they have attained full physical effectiveness over the disputed property while it was within the expropriating country's jurisdiction, or where non-enforcement would be unjust to private parties who had dealt with the nationalizing sovereign in good faith. *Petrogradsky M. K. Bank* v. *National City Bank, supra; Salimoff & Co.* v. *Standard Oil Co.*, 262 N.Y. 220, 225; *Banque de France* v. *Equitable Trust Co.*, 33 F. 2d 202 (S.D.-N.Y.). Petitioner's case cannot fall within either of these exceptions. The Soviet Latvian regime has never been able to reduce the confiscated ships to possession or otherwise establish its control over them. *Supra*, pp. 4-6. And petitioner is patently not an innocent third part but an *alter ego* of the expropriating government itself. This suit is, in effect, a demand upon a federal court by Soviet Latvia for direct aid in the enforcement of its nationalization program.

3. All the cases passing upon the nationalization decrees of the Soviet regimes in the Baltic states are in accord with the court below. In particular, the Third Circuit also explicitly accepts the executive policy of non-recognition as binding. *The Maret*, 145 F. 2d 431 (C.A. 3). See also *The Signe*,

39 F. Supp. 810 (E.D. La.), affirmed *sub. nom. The Florida,* 133 F. 2d 719 (C.A. 5), certiorari denied, 319 U.S. 774, rehearing denied, 320 U.S. 811; *The Kotkas,* 35 F. Supp. 983 (E.D.N.Y.); *The Kuressaar,* A.M.C. (1941) 1190 (D.C. Md.) (not otherwise reported); *In re Grauds' Estate,* 43 N.Y.S. 2d 803 (Surr. Ct. N.Y. County). Cf. *The S. S. Denny,* 40 Supp. 92 (D.N.J.), reversed, 127 F. 2d 404, in which the Third Circuit reversed on the ground that there was insufficient evidence that a power of attorney from the former owners had been obtained by duress.

Similar attempts to secure judicial recognition of these decrees have failed in Ireland (*Zarine* v. *Owners of S .S. Ramava,* [1942] I. R. 148 (Sup. Ct. Ireland)) and in England and Canada, although those countries have given *de facto* recognition to the Soviet annexation of the Baltic States. *A/S Tallinna Laevauhisus* v. *Estonian State S. S. Line,* 80 LL.L. Rep. 99 (Ct. of Appeal); *Laane and Baltser* v. *Estonian State Cargo and Passenger Steamship Line,* [1949] 2 D.L.R. 641 (Sup. Ct., Canada).

4. In addition to its arguments as to the lack of effect of non-recognition, petitioner advances an alternative line of argument, urged for the first time in this court, that the United States is here a mere stakeholder, that the real controversy is between petitioner and the emigré former owners of the Latvian ships, and that the judgment below

deprived it of an opportunity to have that controversy adjudicated on a "record after trial" (Pet. 22-23), as required by Section 9(a) of the Act.

This argument manifests a misunderstanding of the machinery and operation of the Trading with the Enemy Act. By the vesting orders in question the Custodian took the *res* itself, and not merely the "right, title and interest" of the former owners, and he did not merely step into their shoes.[16] *Kahn* v. *Garvan,* 263 Fed. 909, 913 (S.D. N.Y.); *Stern* v. *Newton,* 180 Misc. 241, 39 N.Y.S. 2d 593, 598. Cf. *Zittman* v. *McGrath,* 341 U.S. 446, 463-464. All private interests in the funds were terminated and all right, title, and interest became vested in the Custodian. *Commercial Trust Co.* v. *Miller,* 262 U.S. 51, 56; *United States* v. *The Antoinetta,* 153 F. 2d 138, 143 (C.A. 3), certiorari denied, 328 U.S. 863. The funds became the property of the United States and the former owners no longer had any interest therein. *Cummings* v. *Deutsche Bank,* 300 U.S. 115, 121.

The vesting, once made, could be questioned only in a suit under Section 9(a), which is the exclusive

[16] Petitioner's statement (Pet. 23) that at the time of vesting its "agent had actual title and possession" has no foundation. As a court-appointed trustee Recht was an officer of the court, not petitioner's agent, and whatever "title and possession" he and his co-trustee had was held for the court. In both World War I and World War II, property held by fiduciaries has been held subject to seizure. *Central Trust Co.* v. *Garvan,* 254 U.S. 554; *Farmers' Loan & Trust Co.* v. *Hicks,* 9 F. 2d 848 (C.A. 2), certiorari denied, 269 U.S. 583; *Propper* v. *Clark,* 337 U.S. 472; *Central Hanover Bank & Trust Co.* v. *Markham,* 68 F. Supp. 829 (S.D.N.Y.).

remedy. *Clark* v. *Uebersee Finanz-Korporation,* 332 U.S. 480, 487. And in its suit under Section 9(a) the petitioner had the burden of establishing its own title as against the United States in a proceeding *de novo. Stoehr* v. *Wallace,* 255 U.S. 239, 246.[17] To that proceeding, whatever record petitioner might have been able to make as to the merits or the demerits of the title of the emigré claimants was irrelevant. As to petitioner's own title, the matters of fact upon which it based its claim, including the nationalization decrees (Pet. 3), were admitted, and only the question of law as to their legal effect remained, so the entry of summary judgment was proper. *Associated Press* v. *United States,* 326 U.S. 1, 5-6.[18]

---

[17] The terms of Section 9(a) make it clear that the plaintiff must establish his own right, title, or interest. The statute first grants the right to sue to a non-enemy person "claiming any interest, right, or title in any money or other property" vested by the Custodian, or claiming as creditor of the enemy, and then provides that such persons may sue "to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled."

[18] The situation is not changed by the fact that, under his discretionary authority under Section 32 of the Act to make returns to enemies, the Custodian has announced his intention to return partial interests in two of the three ships to the former Latvian owners. See *supra,* pp. 6-7. Publication of a notice of intention to return under 32 confers no right of action and the notice may be revoked. Section 32(f). Decisions under Section 32 are not subject to judicial review. *McGrath* v. *Zander,* 177 F. 2d 649 (C.A.D.C.); *Guessefeldt* v. *McGrath,* C.A.D.C., May 3, 1951. And even in the case

CONCLUSION

The decision below is correct and there is neither a conflict of decisions nor a substantial question as to the application of prior decisions of this Court. It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General,

HAROLD I. BAYNTON,
Assistant Attorney General,

GEORGE B. SEARLS,
JOSEPH LAUFER,
Attorneys.

JULY, 1951.

---

of a return under Section 9, which is reviewable, we know of nothing in the Act or elsewhere which gives an unsuccessful claimant the right to enjoin a return to a successful claimant, or to require that conflicting claimants be interpleaded.

APPENDIX

I. *The Statute*

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended, 50 U.S.C. App. 1 et seq.:

> SEC. 2. That the word "enemy", as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—
>
> (a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.
>
> SEC. 5.
>
> * * * * *
>
> (b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—
>
> (A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers

of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest, by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; * * * and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

* * * * *

SEC. 9. (a) That any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above

required and shall have made no application to the President, said claimant may institute a suit in equity in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

* * * * *

SEC. 32. (a) The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by the court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the Government of Germany, Japan, Bulgaria, Hungary, or Rumania; or

(B) a corporation or association organized under the laws of such nation: *Provided,* That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior

to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further,* That such owner or owners shall succeed to those obligations limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of Italy or of any nation with which the United States has not at any time since December 7, 1941, been at war: *Provided,* That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided,* That notwithstanding the provisions of this subdivision (D) return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation; or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided,* That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since Decem-

ber 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U.S.C. 89-96), in respect of the property or interest or proceeds to be returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942; or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

* * * * *

(e) No return hereunder shall bar the prosecution of any suit at law or in equity against a person to whom return has been made, to establish any right, title, or interest, which may exist or which may have existed at the time of vesting, in or to the property or interest returned, but no such suit may be prosecuted by any person ineligible to receive a return under subsection (a) (2) hereof. With respect to any such suit, the period during which the property or interest or proceeds returned were vested in the Alien Property Custodian shall not be included for the purpose of determining the application of any statute of limitations.

(f) At least thirty days before making any return to any person other than a resident of the United States or a corporation organized under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, the President or such officer or agency as he may designate shall publish in the Federal Register a notice of intention to make such return, specifying therein the person to whom return is to be made and the place where the property or interest or proceeds to be returned are located. Publication of a notice of intention to return shall confer no right of action upon any person to compel the return of any such property or interest or proceeds, and such notice of intention to return may be revoked by appropriate notice in the Federal Register. After publication of such notice of intention and prior to revocation thereof, the property or interest or proceeds specified shall be subject to attachment at the suit of any citizen or resident of the United States or any corporation organized

under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, in the same manner as property of the person to whom return is to be made: *Provided*, That notice of any writ of attachment which may issue prior to return shall be served upon the Alien Property Custodian. Any such attachment proceeding shall be subject to the provisions of law relating to limitation of actions applicable to actions at law in the jurisdiction in which such proceeding is brought, but the period during which the property or interest or proceeds were vested in the Alien Property Custodian shall not be included for the purpose of determining the period of limitation. No officer of any court shall take actual possession, without the consent of the Alien Property Custodian, of any property or interest or proceeds so attached, and publication of a notice of revocation of intention to return shall invalidate any attachment with respect to the specified property or interest or proceeds, but if there is no such revocation, the President or such officer or agency as he may designate shall accord full effect to any such attachment in returning any such property or interest or proceeds.

II. *The Vesting Orders*

Office of the Alien Property Custodian, Washington

Vesting Order Number 1941

[8 F.R. 11304]

IN RE LATVIJAS KUGNIECIBAS SABIEDRIBA (LATVIAN SHIPPING COMPANY) AND MARTIN OSIS, LIBEL-

ANTS, v. S.S. "CILTVAIRA", HER TACKLE, APPAREL, FURNITURE, ETC., AND DANIEL F. YOUNG, INC., RESPONDENTS (ADMIRALTY No. 122-195)

and

LATVIJAS KUGNIECIBAS SABIEDRIBA (LATVIAN SHIPPING COMPANY), AND KARLIS AIGARS, LIBELANTS, v. S.S. "ABGARA", HER TACKLE, APPAREL, FURNITURE, ETC., AND AUGUSTS PATERIS GALDINS, RESPONDENTS (ADMIRALTY No. 122-40)

(File No. F-65-71; E. T. Sec. 704)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order 9095, as amended, and pursuant to law, the Alien Property Custodian after investigation,

Finding that—

(1) The property and interest hereinafter described are property which is in the process of administration by Charles Recht and Joseph G. Kearns, trustees, acting under the judicial supervision of the United States District Court, Southern District of New York;

(2) Karlis Jansons and Janis Zalcmanis are persons acting or purporting to act directly or indirectly for the benefit of or on behalf of a national of a designated enemy country, Germany, who is a person within such designated enemy country, Germany, and such persons are therefore nationals of a designated enemy country, Germany;

(3) Such property and interests are payable or

deliverable to, or claimed by, nationals of a designated enemy country, Germany; namely,

Nationals and last known address:

Karlis Jansons, Riga, Latvia; Janis Zalcmanis, Riga, Latvia; Georg Freimanis, Germany; "Jane" Freimanis, true first name unknown, the widow of Janis Freimanis, deceased, Germany.

Heirs, legatees, devisees, distributees, names unknown, entitled to receive the assets of the estate of Janis Freimanis, who died a resident of Germany, Germany;

and determining that—

(4) If such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, Germany;

(5) The national interest of the United States requires that Karlis Jansons and Janis Zalcmanis be treated as nationals of a designated enemy country, Germany; and

Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest,

Now, therefore, the Alien Property Custodian hereby vests the following property and interests:

The sum of $258,398.76 together with any and all additions of interest and principal thereto subject to the deductions of any at-

torneys' fees and trustees' fees, commissions and expenses as may be payable pursuant to an order of the court exercising jurisdiction over said sum which is in the possession of Joseph G. Kearns and Charles Recht as trustees for the Latvian Steamship *Ciltvaira*.

The sum of $578,826.75 together with any and all additions of interest and principal there to subject to the deductions of any attorneys' fees and trustees' fees, commissions and expenses as may be payable pursuant to an order of the court exercising jurisdiction over said sum which is in the possession of Joseph G. Kearns and Charles Recht as trustees for the Latvian Steamship *Abgara*.

to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within

such further time as may be allowed by the Alien Property Custodian.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Dated: August 6, 1943.

[OFFICIAL SEAL]

(Signed) LEO T. CROWLEY,
Alien Property Custodian.

OFFICE OF ALIEN PROPERTY CUSTODIAN,
WASHINGTON

Vesting Order Number 1942

[8 F. R. 11304]

IN RE LATVIJAS KUGNIECIBAS SABIEDRIBA, LIBELANT, v. STEAMSHIP "REGENT", HER TACKLE, APPAREL AND FURNITURE—AND—ANDERS SVARRER, RESPONDENTS (ADMIRALTY #16052)

(File No. F-9-100-65-71; E. T. Sec. 704)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order 9095 as amended, and pursuant to law, the Alien Property Custodian after investigation,

Finding that—

(1) The property and interests hereinafter described are property which is in the process of administration by Charles Recht and Joseph G. Kearns, Trustees, acting under the judicial super-

vision of the United States District Court, Eastern District of New York.

(2) Such property and interests are payable or deliverable to, or claimed by, nationals of a designated enemy country, Germany, namely;

Nationals and last known address:

Georg Freimanis, Germany. "Jane" Freimanis, true first name unknown, the widow of Janis Freimanis, deceased, Germany.

The heirs, legatees, devisees, distributees, names unknown, entitled to receive the assets of the estate of Janis Freimanis, who died a resident of Germany, Germany.

And determining that—

(3) If such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, Germany; and

Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest,

Now, therefore, the Alien Property Custodian hereby vests the following property and interests:

> The sum of $333,793.93 together with any and all additions of interest and principal thereto subject to the deductions of any attorneys' fees, trustees' fees, commissions and expenses as may be payable pursuant to an order of the court exercising jurisdiction over

said sum which is in the possession of Joseph G. Kearns and Charles Recht and trustees for the Latvian Steamship *Regent,*

to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Dated: August 6, 1943.

[OFFICIAL SEAL] LEO T. CROWLEY,
Alien Property Custodian.

OFFICE OF ALIEN PROPERTY CUSTODIAN
WASHINGTON

Vesting Order Number 2092

[8 F. R. 12831]

In re: ESTATE OF JANIS FREIMANIS, ALSO KNOWN AS JANIS FREYMAN AND JANIS FREYMANN, DECEASED: ESTATE OF JANIS ZALCMANIS, ALSO KNOWN AS JANIS ZALCMAN AND J. SALCMAN, ABSENTEE: AND ESTATE OF KARLIS JANSONS, ALSO KNOWN AS K. JANSON, ABSENTEE

(File No. 017-3777)

Under the authority of the Trading with the Enemy Act, as amended, and Executive Order 9095, as amended, and pursuant to law, the Alien Property Custodian after investigation,

Finding that—

(1) The property and interests hereinafter described are property which is in the process of administration by Irving Trust Company, Woolworth Branch, New York City, depositary, acting under the judicial supervision of the Surrogate's Court, New York County, State of New York;

(2) Karlis Jansons, also known as K. Janson, and Janis Zalcmanis, also known as Janis Zalcman and J. Salcman, are persons acting or purporting to act directly or indirectly for the benefit of or on behalf of a national of a designated enemy country, Germany, who is a person within such designated enemy country, Germany, and such persons are therefore nationals of a designated enemy country, Germany;

(3) Such property and interests are payable or deliverable to, or claimed by, nationals of a designated enemy country, Germany; namely,

Nationals and last known address

Karlis Jansons also known as K. Janson, Riga, Latvia.
Janis Zalcmanis, also known as Janis Zalcman and J. Salcman, Riga, Latvia.
Georg Freimanis, Germany
"Jane" Freimanis, true first name unknown, the widow of Janis Freimanis, deceased, Germany.

The heirs, legatees, devisees, distributees, names unknown, entitled to receive the assets of the Estate of Janis Freimanis, who died a resident of Germany, Germany.

And determining that—

(4) If such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country, Germany;

(5) The national interest of the United States requires that Karlis Jansons, also known as K. Janson, and Janis Zalcmanis, also known as Janis Zalcman and J. Salcman, be treated as nationals of a designated enemy country, Germany; and

Having made all determinations and taken all action, after appropriate consultation and cer-

tification, required by said Executive Order or Act or otherwise, and deeming it necessary in the national interest,

Now, therefore, the Alien Property Custodian hereby vests the following property and interests:

The sum of $40,247.83, together with any and all additions of interest or principal thereto on deposit in the Irving Trust Company, Woolworth Branch, New York City, in the name of the Latvian Shipping Co.,

to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

Such property, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian.

The terms "national" and "designated enemy

country" as used herein shall have the meanings prescribed in Section 10 of said Executive Order.

Dated: September 4, 1943.

[OFFICIAL SEAL.]

(S.) Leo T. Crowley,
Alien Property Custodian.

III. *Letter of the Department of State*

DEPARTMENT OF STATE
WASHINGTON

March 26, 1948

The Honorable The Governor of Alabama.

SIR: There have recently come to the Department's attention several cases in which a person acting as attorney for the Consul General of the Union of Soviet Socialist Republics in New York City, claimed the right in behalf of nonresident Latvians, Estonians and Lithuanians to receipt for their distributive shares derived from estates in process of probate.

The Department has never recognized the incorporation of Latvia, Estonia, and Lithuania into the Soviet Union, and consequently does not regard Soviet consular officers or their attorneys as having any right to act on behalf of nonresident Latvian, Estonian or Lithuanian nationals with respect to distributive shares owing to them from estates of persons dying in the United States. In the cases of Latvian and Estonian nationals, such right has been reserved to consular officers of the respective countries by Article XXV of the Treaty

of Friendship, Commerce and Consular Rights of 1928 between the United States and Latvia (45 Stat. 2641) and Article XXIV of the Treaty of Friendship, Commerce and Consular Rights of 1928 between the United States and Estonia (44 Stat. 2379). Moreover, even in the absence of applicable treaty provisions, the Department does not consider that Soviet consular officers in the United States have any right to represent nationals of a third country, whether residing in the United States or elsewhere, without that country's consent. It is respectfully requested that you advise the courts of your State having to do with probate proceedings of the position of the Department with respect to the incorporation of the Baltic States into the Soviet Union, and that you request them in considering the validity of powers of attorney given by persons in the Baltic States to Soviet officials in the United States or their attorneys to give appropriate consideration to this Department's position of nonrecognition of Soviet sovereignty in Latvia, Estonia, and Lithuania.

As you doubtless know, it has been generally recognized by American writers on international law as well as by the courts that the questions as to what regime in a foreign country is to be recognized as the government thereof and what persons are to be recognized as representing such regime are matters for determination by the executive branch of our Government, although there have been some instances in which the legislative branch has had a part in the recognition of new states. Needless to say, where the conclusion of a treaty or the sending of an ambassador or minister is in-

volved, the Senate has a part. (I Moore, *International Law Digest,* 245-247; 1 Hackworth, *Digest of International Law,* 161 *et seq.;* 1 Hyde, *International Law* (2d edition) 156 *et seq.;* Hershey, J. G., *The Legal Effects of Recognition in International Law,* p. 24; Berdahl, *C. A., The Power of Recognition,* 14 *American Journal of International Law* (1920) 519. See also *Jones* v. *United States,* 137 U.S. 202, 212; *Oetjen* v. *Central Leather Co.,* 246 U.S. 297, 302; *Guaranty Trust Co.* v. *United States,* 304 U.S. 126, 137; *United States* v. *Pink,* 315 U.S. 229, 230.)

Very truly yours,

For the Secretary of State:

(S.) Ernest A. Gross,
The Legal Adviser.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 959593 81